



Appeal Decision

Site visit made on 22 October 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/G5750/C/22/3313022

158 Major Road, Stratford, London E15 1DY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Muhibur Rahman Choudhury against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 14 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the ground and basement floors of the premises to six self-contained units of residential accommodation.
 - The requirements of the notice are to:
 1. Cease the use of the ground and basement floors of the property as self-contained units of residential accommodation.
 2. Demolish the single storey rear extension (as shown in the approximate location edged in blue on the plan attached to the enforcement notice).
 3. Remove from the property all kitchens and bathrooms that solely facilitate the use of the ground and basement floors as self-contained units of residential accommodation.
 4. Remove from the property all internal dividing doorways and internal partitioning which solely facilitate the use of the ground and basement floors as self-contained units of residential accommodation.
 5. Remove from the property all duplicate doorbells, door buzzers and post-boxes which solely facilitate the use of the ground and basement floors as self-contained units of residential accommodation.
 6. Remove from the property all duplicate supplies of electricity, gas and water that serve the ground and basement floor self-contained units of residential accommodation.
 7. Remove from the site all debris arising from compliance with steps 1 to 6.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The enforcement notice is quashed.

The Enforcement Notice

2. An enforcement notice should enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach.
3. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party.

4. Under their appeal on ground (f) the appellant raised the matter of whether the notice is a nullity because, in their view, it does not enable the recipient to know exactly what steps the Council require to be taken, in respect of requirement numbers four and six. An enforcement notice is a nullity only if it is defective on its face, which means that it lacks some essential constituent or is incapable of being understood.
5. I have had regard to the appeal decision provided¹. However, requirement four is not so fundamentally vague or uncertain that the appellant would not know how to comply, particularly since it is an established principle that the landowner should have the best knowledge of what the previous condition, in this case layout, of the property was.
6. Moreover, if I had not quashed the notice, I could have used my powers of correction to vary requirement four, to require the layout of the ground and basement floors to be restored to their former condition, without causing injustice to the parties.
7. Requirement six is clear, it requires *duplicate* [my emphasis] supplies of gas, electricity and water that serve the ground and basement floor units to be removed, not all supplies. The notice is not a nullity.
8. As issued, the notice is targeted at a material change of use, which in respect of the four units in the existing building is accurate. However, there was no material change of use in respect of the extension. It was erected for the purpose of providing two self-contained units of accommodation, it was not secondary to or facilitative of a change of use, but operational development in its own right. The allegation is inaccurate in this respect.
9. Accordingly, the development that has occurred is the material change of use of the ground and basement floors of the existing building to form four self-contained units of residential accommodation, and operational development consisting of the erection of an extension to form two self-contained units of residential accommodation.
10. I have considered carefully whether I could correct the allegation along these lines without causing injustice. However, as issued the Council relied on the *Murfitt*² principle in requiring the demolition of the extension, but this principle does not extend to works that are more than merely ancillary or secondary and are instead fundamental to or causative of the change of use itself. In relying on the *Murfitt* principle, the Council identified no reasons for issuing the notice in respect of the operational development.
11. Whilst both parties provided an assessment of the impact on the character and appearance of the area in their statements, had the allegation been accurate in the notice as originally issued, I cannot discount the possibility that the Council would have identified additional reasons for issuing the notice, nor that the appellant would have made their case, particularly on grounds (a) and (f) differently.
12. For these reasons, I do not consider that correcting the enforcement notice is possible without causing injustice. Therefore, it should be quashed as inaccurate and incapable of correction without injustice to the Council or the

¹ APP/Y5420/C/20/3258728

² *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

appellant. Since this is a case where the Council have misdescribed the alleged breach, they may consider issuing another enforcement notice in exercise of their 'second bite' powers under section 171B(4).

Conclusion

13. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended), since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
14. In these circumstances, the appeal on the grounds set out in section 174(2) (d), (a), (f) and (g) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Felicity Thompson

INSPECTOR